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Enclosure 6b2
December 4, 2018

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December 4, 2018

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of
DCYF v. North Kingstown School Department

The Appeals Committee of the Council on Elementary and Secondary Education met on November 5, 2018, to hear oral argument on the appeal of the following Commissioner decision:

DCYF v. North Kingstown School Department

RECOMMENDATION: THAT, in the matter of DCYF v. North Kingstown School Department, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

**DEPARTMENT OF CHILDREN
YOUTH AND FAMILIES**

vs.

**NORTH KINGSTOWN PUBLIC
SCHOOL DEPARTMENT**

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In re Student C. Doe

DECISION

This is an appeal by the Rhode Island Department of Children, Youth, and Families (“DCYF”) from the decision of the Commissioner of Education (“Commissioner”), dated March 9, 2018, whereby the Commissioner ordered that DCYF create an educational stability plan for student C. Doe (“Doe”) and that the North Kingstown Public School Department (“NKSD”) enroll Doe in the Davisville Middle School (“Davisville”).

The pertinent facts and travel of the case are as follows. Doe was placed in foster care with his Grandmother in Johnston, RI on March 8, 2017. DCYF did not create a written educational stability plan pursuant to the Every Student Succeeds Act (“ESSA”). *See*, 20 U.S.C. §6311(g)(E). Doe’s Grandmother transported Doe to and from North Kingstown to continue attending Davisville for the remainder of the then current school year. The following school year, in August of 2017, Doe’s Grandmother enrolled him at the Ferri Middle School in Johnston, RI. In January of 2018, Doe’s Grandmother moved herself and Doe to North Kingstown, RI to allow Doe to finish middle school at Davisville. NKSD refused enrollment based upon a claim that

Doe and Doe's Grandmother did not reside in North Kingstown. On February 16, 2018 DCYF filed a petition for interim protective relief pursuant to Rhode Island General Laws ("RIGL") §16-39-3.2 asking the Commissioner to order NKSD to enroll Doe at Davisville.

A hearing commenced on February 27, 2018. NKSD argued that it provided sufficient factual evidence that Doe was not a resident of North Kingstown and therefore it did not need to enroll Doe at Davisville under Rhode Island residency laws. RIGL §16-64-1. DCYF, while acknowledging that it failed to properly perform a "best interest" determination under ESSA at the time of placement, argued that the subsequent change of residence by Doe does not require such a determination under ESSA provisions. *See* 20 U.S.C. §6311(g)(E)(1), (hereinafter referred to as a "best interest determination"). DCYF reasons that a change in residency only that is not accompanied by a change in foster placement does not trigger a best interest determination under the law. Therefore, state law with respect to residency should be applied and Doe's residency in North Kingstown requires NKSD to enroll Doe at Davisville.

In a decision dated March 9, 2018 (the "Decision"), the Commissioner determined that the educational stability provisions of ESSA apply and required NKSD to enroll Doe at Davisville. Had DCYF followed ESSA at the time of the first placement in Johnston, including ESSA's legal presumption that Doe should remain in his school of origin, Doe would have remained at Davisville the entire time. Therefore, the Commissioner determined that DCYF must complete an educational stability plan, including a best interest determination under ESSA. However, NKSD was ordered to enroll Doe at Davisville in accordance with ESSA pending completion of DCYF's ESSA obligations including a required best interest determination.

DCYF appealed contending that the Commissioner erred by finding that ESSA's best interest determination must be conducted after every foster child's change in residence. NKSD

enrolled Doe and has decided not to appeal the Decision in any way. Therefore, this appeal is limited to the grounds raised by DCYF. We have reviewed the record, the party's briefs, and considered the oral argument presented. We find that DCYF has presented no grounds to reverse or modify the Decision under our standard of review.

In considering DCYF's appeal, we are mindful of the standard of review for appeals brought to the Council on Elementary and Secondary Education ("Council"). Review is limited to whether the Commissioner's decision is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (R.I. 1975). The Commissioner noted that ESSA is in place "to 'ensure collaboration' with state child welfare agencies like DCYF 'to ensure the educational stability of children in foster care . . . enrolls or remains in such child's school of origin, unless a determination is made that it is not in such child's best interest to attend the school or origin.'" Decision of the Commissioner at Page 7 (quoting the Elementary and Secondary Education Act of 1965 ("ESEA") at §1111(g)(1)(E)(i)).

DCYF asked the Commissioner to find that the term "school or origin", undefined by ESSA, be interpreted using non-regulatory guidance Questions and Answers. *See Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (June 23, 2016). DCYF further asked that the non-regulatory guidance be read to conclude that the child's school of origin is the school the child attends at the time of placement in foster care, and that the school of origin may only be changed to a new school if a child's foster care placement changes, and not merely if a residency change occurs. *Id.* at 11. However, the Commissioner rejected the assertion that ESSA's language requiring a best interest determination does not encompass a change in residence only. The Commissioner correctly noted that much of the non-regulatory guidance relied upon by DCYF concerns changes in residence. Decision at 8. The Commissioner

further noted that a common sense reading of ESSA's requirement of educational stability dictates that a change in residence will trigger ESSA's provisions to perform a best interest determination. Decision at 9. Stated differently, the plain language of ESSA asks DCYF to "ensure the educational stability of children . . . unless a determination is made that it is not in such child's best interest to attend the school of origin." ESEA at §1111(g)(1)(E)(i).

Additionally, we note that DCYF has provided no legal authority for the definition of "foster care placement" it proffers. Instead it relies upon federal regulation which only uses the word placement within the definition of "foster care." *See* 45 C.F.R. §1355.20(a). Not only would the interpretation DCYF asks us to make contradict the plain language of the statute, but DCYF has offered no legal support for the assertion that the term "foster care placement" itself may not include a change in residency only.

Lastly, we find that the Commissioner relied upon DCYF's admitted failure to perform a best interest determination at the time of the original placement in ordering an educational stability plan and placement at Davisville. The Commissioner stated that "[t]he evidence . . . make clear that had DCYF complied with ESSA in March of 2017, ESSA's legal presumption that C. Doe should remain in his school of origin (Davisville) would have remained in effect, and transportation would have been provided." Decision at 10. While we agree that a change in residency requires DCYF to perform a best interest determination, as outlined above, the failure of DCYF to perform the original educational stability plan and Commissioner's related reasoning alone would be a sufficient basis to uphold the decision of the Commissioner.

No part of the Commissioner's decision is "patently arbitrary, discriminatory or unfair." Altman at 405. DCYF has presented no grounds to reverse or modify the Commissioner's decision under the Council's standard of review.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2018.

Council on Elementary and Secondary Education,

Daniel P. McConaghy, Chair

December 4, 2018

Amy Beretta, Appeals Committee Chair

December 4, 2018